## REMARKS

Claims 1-19 are pending. Claims 4, 5 and 13-14 are withdrawn as being drawn to non-elected subject matter.

The support for the amendments to the claims are as follows: Claim 7: (publication [0104]; [115] and [158]); Claim 8: (claim dependency); and Claim 11: (publication [0053] and [0108]). The applicant asserts that no new matter has been added.

**Claims 7 and 11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.** (Office Action, P. 3)

First, claim 7 has been amended to replace "SRE region" with "SRE sequence" to clarify the claim.

Second, claim 11 has been amended to replace "DNA fragment obtained by partial modification of the DNA fragment" with "DNA fragment obtained by substitution or deletion of a part of the bases constitute the DNA fragment, or by addition or insertion of one to several bases," to clarify the claim.

It is respectfully requested that the rejection of claims 7 and 11 be withdrawn.

**Claims 1-3, 6-7, 11-12, and 15-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Boel et al (U.S. Patent No. 5,536,661: issued 16 July 1996.** (Office Action, page 5)

Claim 1 is directed to a **modified promoter constructed by externally inserting a first DNA fragment and a second DNA fragment** into a promoter capable of functioning in a filamentous fungus (see, for example, figures 4 and 5). Boel et al discloses a native TAKA-amylase promoter and a vector carrying functional parts thereof (see, for example, abstract and figure 1). No description regarding a **modification of promoter itself** is found in anywhere Boel et al., much less the modification of a promoter with a first DNA fragment including CCAATNNNNNN and a second DNA fragment including CGGNNNNNNNNGG.

Boel discloses that promoters may be derived, but this is different than actual base pair modification. For example Boel discloses (col.7, lines 7-12):

> Suitable promoters may be derived from genes for A. *oryzae* TAKA amylase, *Rhizomucor miehei* aspartic proteinase, A. *niger* giucoamylase [sic], A. niger neutral α-amylase, A. niger acid stable α -amylase, and *Rhizomucor miehei* lipase. Examples of promoters from genes for glycolytic enzymes are TPI, ADH and PGK.

But Boel does not disclose the modification of promoters in fact. Thus, the invention of claim 1 is not legally anticipated by Boel et al.

It is respectfully requested that this rejection be withdrawn.

**Claims 7-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Minetoki et al.** (Office Action, P. 6)

Claim 7 is directed to a modified promoter, wherein a first DNA fragment and a second DNA fragment are inserted so that these two sequences are arranged sequentially from the 5'-end side to 3'-end side (see claim 6 from which claim 7 depends).

Minetoki et al disclose a modification of the promoter of **agdA gene** by inserting the Region III sequence, which includes Regions IIIa and IIIb being arranged sequentially from the 5'-end side to the 3'-end side. The Region IIIa and Region IIIb correspond to a second DNA sequence and a first DNA sequence, respectively. (See Fig. 1 and p.464, col.2) **Therefore, the order of two sequences inserted to modify the promoter in Minetoki et al is opposite to that in claim 7.** Thus, claim 7 cannot legally be anticipated by Minetoki et al.

As for the claims 8-10, Claim 8 has been amended to depend from claim 6 making the rejection of this claim and dependant claims 9 and 10 now moot.

It is respectfully requested that this rejection be withdrawn.

In view of the above amendment, applicant believes the pending application is in condition for allowance.

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Respectfully submitted,

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